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21 March 1956

MEMORANDUM FOR RECORD

SUBJECT: Building - Operation and Maintenance

1. As discussed in much greater detail in an Opinion of this Office dated 26 August 1955 (of which a copy is attached to copy of this memorandum) there has been considerable controversy over whether the Agency or GSA has the paramount authority for construction of the CIA building. In summary, I might say that GSA was relying on the fairly broad provisions of 40 U.S.C. 341 while we, on the other hand, argue that that Section was not so broad as to preclude the Congress granting construction authority to us.

2. According to the agreement signed between CIA and GSA in February of this year, our interpretation seems to have been accepted by GSA, since that agreement cites only three provisions of law: our Authorization Act, our Appropriation Act, and P. L. 152, 81st Congress, as amended, "particularly Section 210(c) thereof." The last named has been embodied in the Code as 40 U. S. C. 490(c) which provides:

"(c) At the request of any Federal agency or any mixed-ownership corporation (as defined in the Government Corporation Control Act), or the District of Columbia, the Administrator is authorized (1) to acquire land for buildings and projects authorized by the Congress; (2) to make or cause to be made, under contract or otherwise, surveys and test borings and to prepare plans and specifications for such buildings and projects prior to the approval by the Attorney General of the title to the sites thereof; and (3) to contract for, and to supervise, the construction and development and the equipping of such buildings or projects. Any sum available to any such Federal agency or instrumentality for any such building or project may be transferred by such agency to the General Services Administration in advance for such purposes as the Administrator shall determine to be necessary, including the payment of salaries and expenses of personnel engaged in the preparation of plans and specifications or in field supervision, and for general office expenses to be incurred in the rendition of any such service."

SUBJECT: Building - Operation and Maintenance

3. As GSA has accepted by this agreement our view that they are constructing this building at our request, then they cannot seriously argue that Section 341 applies. This is highly relevant to the operation and maintenance of the building after its construction. Buildings which are constructed under Section 341, "when completed and ready for occupancy, shall be turned over to the Administrator of General Service for care, maintenance, and protection...." (40 U.S.C. 348) If a building is not constructed under authority of Section 341, then it does not automatically fall under the control of GSA for operation and maintenance purposes. This is discussed in some detail in paragraphs 12, 13, and 14 of our Opinion of 26 August 1955.

4. In the case of a building not automatically coming under the control of the Administrator, it remains under the control of the occupying agency unless transferred to the Administrator by the Bureau of the Budget, whose authority in this respect is set out in 40 U.S.C. 490(d). It is noteworthy that any transfer of operation and maintenance to the Administrator is subject to a limitation sanctified in two Opinions of the Attorney General (see paragraph 15 of our Opinion of 26 August 1955) that no agency can be moved out of a building specifically designated by the Congress for its occupancy.

5. In summary, we can probably operate and maintain our own building if we want to. Whether we want to or not involves policy more than legal considerations. Several legal questions have arisen, however, resolution of which requires a determination as to whether CIA or GSA will operate the completed building.

a. Guards - The office of Security has indicated some desire that we maintain our own guard force in the new building. I understand that they have also given some thought to maintaining our own car force. There are fairly complex legal problems involved in this, especially in connection with the guard force. Investigation, without indicating that we are considering our own guard force, would probably be impossible. If we want our own guard force, we can proceed with this investigation. To so proceed, possibly arousing the hostility of GSA and our present guard personnel, might be unwise if this matter is not being seriously considered.

b. Concessions - If GSA (PBS) operates our building, we will probably fall under their Master Contract with GHI for the operation of a cafeteria, and our discretion with respect to the operation of blind stands, vending machines and commercial concessions, (as well as the possibility that the profits from some of these activities might

CIA INTERNAL USE ONLY

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accrue to an employee welfare association) would be less if GSA operated the building than if we did so. [redacted] informs me that the architect must know what our plans are for concessions, etc. Before we can decide what these plans are, we must know what is legally permissible. Necessarily precedent to this determination is a determination whether GSA or ourselves will operate the building.

6. RECOMMENDATION: That it be determined whether we wish the operation and maintenance of the building to be by GSA or ourselves, in order that these related problems may be evaluated against the background of that decision and suitable recommendations made for their solution.

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[redacted]
Assistant General Counsel

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cc [redacted]

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